Department of the Treasury
Office of Thrift Supervision

Transmittal

May 15, 1997 **Number: 172**

The Office of Thrift Supervision (OTS) is proposing to ease liquidity requirements for its regulated thrifts to the minimum required by law, consistent with safe and sound operations. Commercial banks and mortgage bankers have no comparable minimum liquidity requirements.

When first enacted in 1950, the statutory liquidity requirement provided a mechanism for regulating the money supply available for housing lending. Circumstances have changed dramatically since that time. Among other things, liquidity is now provided by an active secondary mortgage market.

Therefore, OTS proposes to lower the liquid asset requirement from 5 to 4 percent of an institution's liquidity base, the lowest allowed by law. In addition, OTS proposes to eliminate entirely a separate 1 percent short-term liquidity rule. In addition, OTS would streamline the calculations used to measure compliance with the liquidity requirements, expand the types of assets that can be considered liquid, and reduce the liquidity base by modifying the definition of "net withdrawable account."

Finally, the proposal states that simply meeting the minimum liquidity requirement does not automatically mean a thrift institution holds sufficient liquid assets to support safe and sound operations. Therefore, OTS would add a new regulatory requirement that all savings associations maintain a prudent level of liquidity.

The changes would increase regulatory flexibility and reduce the burden on savings associations. The proposed rule change is part of OTS' ongoing effort to review and streamline its regulations.

The notice of proposed rulemaking was published in the May 14, 1997, edition of the *Federal Register*, Vol. 62, No. 93, pp. 26449–26453. Written comments must be received on or before July 14, 1997, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be faxed to (202) 906-7755, or e-mailed to: public.info@ots.treas.gov.

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Nicolas P. Retsinas

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Office of Thrift Supervision

Attachment

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 566

[No. 97–44]

RIN 1550–AA77

Liquidity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to update, simplify, and streamline its liquidity regulation. This proposal follows a detailed review of the regulation to determine whether it is necessary, imposes the least possible burden consistent with statutory requirements and safety and soundness, and is written in a clear, straightforward manner. Today's proposal is made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

DATES: Comments on this proposed rule must be received on or before July 14, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 97–44. These submission may also be hand delivered to 1700 G Street, NW, from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW, from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Francis Raue, Program Analyst, (202) 906–5750, Robyn Dennis, Manager, Thrift Policy, (202) 906–5751, Supervision Policy, or Susan Miles, Senior Attorney, (202) 906–6798, Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Objectives of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could be quickly repealed. OTS also identified several key regulatory areas for a more intensive, systematic regulatory burden review. The first areas reviewed—lending and investment authority, subsidiaries and equity investments, corporate governance, conflicts of interest, corporate opportunity and hazard insurance—were selected because they have a significant impact on thrift operations, and had not been developed on an interagency basis or been comprehensively reviewed for many years. OTS has issued comprehensive final regulations in all of these areas.[1]

Today's proposal is a part of the next phase of OTS's review of its regulations. The proposed liquidity rule follows an intensive review of the relevant statute and regulation, legal interpretations, and requirements of other federal banking agencies. Like other OTS reinvention efforts, this proposal was prepared in consultation with those who use the regulation on a daily basis, including the agency's regional examination staff.

Both the industry and OTS regulatory staff have consistently cited the liquidity requirement and attendant calculations as an unnecessary burden. Consequently, the review process has led to a consensus that the statutory liquidity requirement no longer serves any useful purpose and should be eliminated. The OTS has in the past recommended legislative action to repeal this requirement.

In the interim, OTS has reviewed its current liquidity regulation and has identified modifications that would reduce the burden of compliance to the maximum extent possible, consistent with the requirements of the statute and safety and soundness considerations. Specifically, the burden of compliance with the liquidity regulation would be decreased by: (1) reducing the liquidity base by excluding withdrawable accounts payable in more than one year

[1] 61 FR 50951 (September 30, 1996) (Lending and Investment); 61 FR 66561 (December 18, 1996) (Subsidiaries and Equity Investments); 61 FR 60173 (November 27, 1996) (Conflicts of Interest, Corporate Opportunity and Hazard Insurance); 61 FR 64007 (December 3, 1996) (Corporate Governance).

from the definition of the term "net withdrawable accounts"; (2) streamlining the calculations used to measure compliance with the liquidity requirement; (3) reducing the liquidity requirement from five percent of net withdrawable accounts and short-term borrowings to four percent; (4) removing the one percent short-term liquidity requirement; and (5) expanding the categories of liquid assets that may count toward satisfying a savings association's liquidity requirement. In addition, a general requirement that thrifts maintain a safe and sound level of liquidity would be added to the regulation. Each of these changes is discussed in full below.

OTS believes that these proposed changes will significantly reduce regulatory burden with respect to the statutory liquidity requirement. While some thrifts may choose to modify their systems to take advantage of the new rule, thrifts need not change any systems they have in place to comply with the current rule.

II. Historical Overview of Current Liquidity Regulation

A. Statutory Requirement and Current Regulation

Section 6 of the Home Owners' Loan Act (HOLA)[2] requires savings associations to meet a liquidity requirement by holding liquid assets in an amount prescribed by the Director of OTS. The Director may, by regulation, vary the amount of the liquidity requirement, but only within pre-established statutory limits. The requirement must be no less than 4 percent and no greater than 10 percent of "the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less."[3] The law identifies the assets that are suitable for liquidity purposes. The Director, however, has express authority to issue regulations defining the terms used in the statute and to prescribe or limit the extent to which certain assets included on the statutory liquidity list may be used to meet the liquidity requirement. The Director also has express authority to prescribe the method for calculating the liquidity requirement.

Regulations implementing the Director's authority under section 6 of the HOLA appear at 12 CFR Part 566. Among other things, these rules define liquid assets to include cash and certain securities with maturity limitations and marketability requirements that are set out in detail.[4] The rules currently impose a liquidity requirement of 5 percent of an institution's liquidity base and a separate, "short-term" liquidity requirement of 1 percent of the liquidity base. The liquidity base is defined as net withdrawable accounts plus short-term borrowings. Except for institutions with less than $25,000,000 in assets, liquidity requirements are based on the "average daily balance" of the liquidity base during the preceding month. Institutions with less than $25,000,000 in assets may calculate their liquidity using month-end figures. These requirements are discussed more fully in Section III below.

B. Reasons for Modifying the Current Rule

When first enacted in 1950, the liquidity statute provided a mechanism for regulating the money supply available for housing. That purpose was reflected in the statutory text, which provides:

> The purpose of this section is to provide a means for creating effective and flexible liquidity in savings association which can be increased when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency. More flexible liquidity will help support sound mortgage credit and a more stable supply of such credit.[5]

Consistent with this purpose, for many years the OTS's predecessor, the Federal Home Loan Bank Board, raised the liquidity requirement when the supply of money for housing was abundant and lowered the requirement when the supply was scarce.

Over the years, however, this mechanism for ensuring a stable flow of housing credit has become obsolete. In recent decades, a vast secondary market for home loans has developed. This market has become the primary source of funding for home loans. Savings associations, as well as other lenders, can now originate home loans without regard to whether they themselves have the capacity to hold those loans in portfolio.

Moreover, due largely to the development of the secondary market, lenders other than thrifts have become major mortgage lenders. Although savings associations are still an important source of housing credit, they are no longer the predominant source. For example, in 1975, thrifts were responsible for 55 percent of home mortgage originations, with mortgage companies originating only 14 percent. Today, those percentages are nearly reversed, with thrifts accounting for only 18 percent of home mortgage originations, while the mortgage companies' share has increased to 56 percent. Mortgage companies, commercial banks and other lenders, unlike savings associations, are not subject to a statutory liquidity requirement.

Adjusting the amount that savings associations must invest in liquid assets is no longer an effective means for regulating or ensuring the stable supply of credit for housing. Thrifts, banks, and mortgage bankers can obtain steady funding for home loans from the secondary market. As a result, the statutory liquidity requirement for savings associations no longer serves a useful purpose.

As indicated above, the statutory liquidity requirement was designed as a mechanism for regulating housing credit, not safety and soundness. Thus, although adequate liquidity is vital to the safety and soundness of depository institutions, the OTS does not rely on the statutory liquidity requirement to ascertain whether an institution has adequate liquidity for purposes of safety and soundness. The statutory requirement is far too rigid and imprecise to be an effective measure of liquidity for safety and soundness purposes. Determining a safe level of liquidity for any particular institution depends on the overall asset/liability structure of the institution, the conditions of the markets where the institution operates, the activities of the institution's competitors and the requirements of the institution's own deposit and loan customers. Through the examination process, the OTS carefully reviews the process that an institution uses to allocate its assets and structure its liabilities to ensure sufficient liquidity to meet its needs and customer demands.

This is the same general approach that the other banking agencies use to examine the institutions they regulate to determine the adequacy of liquidity. For example, the Office of the Comptroller of the Currency states,

> A sound basis for evaluating funds management requires understanding the bank, its customer mix, the nature of its assets and liabilities, and its economic and competitive environment. The adequacy of a bank's liquidity will vary from bank to bank. In the same bank, at different times, similar liquidity positions may be adequate or inadequate depending on anticipated need for funds. In addition, a liquidity position which is adequate for one bank may be insufficient for another bank. Determining the adequacy of a bank's liquidity position depends upon an analysis of the bank's

[2] 12 U.S.C. 1465.

[3] 12 U.S.C. 1465(b)(2).

[4] 12 CFR 566.1(g) (1996).

[5] 12 U.S.C. 1465(a).

present and anticipated asset quality, present and future earnings capacity, historical funding requirements, current liquidity position, anticipated future funding needs, options for reducing funding needs or attracting additional funds, and sources of funds.[6]

It is important to emphasize that the changes the OTS is proposing today are not intended to suggest that the OTS believes that the HOLA's prescribed percent ratio of liquid assets to liabilities is ordinarily a sufficient level of liquidity. As indicated above, from a safety and soundness perspective, the appropriate level of liquidity varies significantly from institution to institution depending upon factors unique to each institution. Thus, compliance with the statutory liquidity requirement does not create a presumption that an institution has adequate liquidity for safety and soundness purposes. As indicated above, the statutory requirement was established as a means of regulating the supply of funds for housing credit, not as a measure of safety and soundness. A savings association's management is responsible for ensuring that the institution has adequate procedures in place to maintain a safe level of liquidity. The OTS will carefully monitor this via examinations.

III. Description of Proposal

The OTS proposes the following amendments to 12 CFR Part 566:

A. Excluding Accounts With Unexpired Maturities Exceeding One Year From the Definition of "Net Withdrawable Accounts"

A savings association must maintain liquid assets of not less than a stated percentage of the amount of its liquidity base. The regulation defines the term "liquidity base" as net withdrawable accounts plus short-term borrowings. 12 CFR 566.1(c). The term "net withdrawable accounts" is defined to mean, with certain exclusions, all withdrawable accounts less the unpaid balance of all loans secured by such accounts. 12 CFR 566.1(d). Short term borrowings are generally defined as borrowings where any portion of the principal is payable on demand or in one year or less. 12 CFR 566.1(e).

The OTS proposes to change the regulation's definition of the term "net withdrawable accounts" to exclude accounts with unexpired maturities exceeding one year, and to delete the word "all" from the phrase "all withdrawable accounts" in the first part of the definition.

The effect of changing the "net withdrawable accounts" definition will be to reduce a savings association's liquidity base by the amount of its outstanding savings accounts payable in more than one year, and to reduce the association's liquid asset requirement accordingly. The OTS believes that this proposed reduced liquid asset requirement is warranted and appropriate to the purpose of the liquidity statute. This change is consistent with the regulation's present exclusion from the liquidity base of borrowings payable in more than one year.

B. Streamlining the Average Balance Calculations of Liquid Assets and Liquidity Base

Under the current rule, for every calendar month, every savings association (other than certain small institutions and mutual institutions that are discussed below) must calculate its average daily balance of its liquid assets and liquidity base. This requires the calculation of the institution's liquid assets and liquidity base as of the close of each business day, from which the daily average balance of liquid assets and liquidity base for each month is computed. The OTS proposes to amend the regulation to require that while institutions must continually satisfy their liquidity requirements, the liquidity base must be calculated only on the last day of the preceding calendar quarter. This eliminates the necessity for savings associations to determine average daily balances for each month.

This change is consistent with other OTS regulations, including the loans-to-one-borrower rule and the capital rule, that use a quarter-end calculation to measure compliance with an ongoing requirement.

The current rule permits a savings association with less than $25 million in total assets at the beginning of a fiscal year, by resolution of its board of directors, to compute its liquid asset requirement as a percentage of its liquidity base at the end of the preceding calendar month (rather than as a percentage of the average daily balance of its liquidity base during the preceding calendar month). 12 CFR 566.2(b). Because the proposed rule would base the liquidity requirement on the institution's liquidity base at the end of the preceding quarter, the exception for small institutions would be more burdensome than the proposal. Accordingly, the OTS proposes to eliminate this provision.

The current rule also contains a provision that grants mutual savings banks an alternative election for satisfying the liquidity requirement. 12 CFR 566.2(e). Although in prior years the election permitted such institutions to maintain a lower percentage of liquid assets than other savings associations, the election is currently no more lenient than the requirement for all savings associations, and would be more burdensome than the proposal. Therefore this provision would also be eliminated.

C. Reducing the Liquid Asset Requirement From Five to Four Percent and Removing the One Percent Short-term Requirement

The OTS proposes to reduce the liquidity requirement from five percent of an institution's liquidity base to four percent. The four percent floor is the lowest the OTS may prescribe under section 6(b)(2) of the HOLA.[7] As noted above, this change would minimize the regulatory burden associated with the statutory liquidity requirement, and is not intended to suggest that OTS considers four percent liquidity sufficient for most institutions. The OTS is aware that most savings associations maintain more than four percent liquidity in order to operate in a safe and sound manner. The OTS will continue to require a savings association to maintain a level of liquidity that is prudent given its particular circumstances. The OTS also encourages institutions to diversify their investments in qualifying liquid assets. Unsafe and unsound concentrations may occur in a securities portfolio, as well as in a loan portfolio.

Section 566.2(a) also requires a savings association, other than a mutual savings bank, to maintain an average daily balance of short-term liquid assets[8] of not less than one percent of the average daily balance of its liquidity base during the preceding calendar month. The original intent of this provision was to require savings associations to have sufficient short-term, easily convertible assets that may be used to meet a portion of the liquidity requirement. With the expansion of the secondary mortgage

[6] *Comptroller's Handbook for National Bank Examiners*, section 405.1, Funds Management-Introduction (March 1990). *See*, *FDIC–DOS Manual of Examination Policies*, "Liquidity and Funds Management," Section II (August 1995); and *Commercial Bank Examination Manual*, section 4020.1 Asset/Liability Management (March 1994).

[7] 12 U.S.C. 1465(b)(2).

[8] This term is currently defined at § 566.1(h)(1996). These assets include cash and liquid assets with short maturities, such as government obligations that will mature in 12 months or less, and corporate debt obligations that will mature in six months or less. The removal of the requirement will also eliminate the need for this definition.

market and the resultant increase in the sources and amount of funds available for mortgages, the one percent short-term liquid asset requirement is no longer necessary. Accordingly, the OTS proposes to eliminate the requirement.

D. Expanding the Categories of Liquid Assets That Count Toward Satisfaction of the Liquidity Requirement

Under sections 6(b)(1)(C)(vi) and (vii) of the HOLA,[9] as added in 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),[10] certain mortgage-related securities and mortgage loans now qualify as liquid assets to the extent approved by the Director of the OTS. The first category consists of mortgage-related securities that are defined in section 3(a)(41) of the Securities Exchange Act of 1934. The second category consists of mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or are guaranteed by the Government National Mortgage Association. The qualifying mortgage-related securities and mortgage loans must have one year or less remaining until maturity, or be subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the securities within a period that does not exceed one year. In addition, the person that agrees to purchase the securities must be an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

The OTS liquidity regulation has never been amended to reflect the foregoing FIRREA provision. The OTS proposes to update the liquidity regulation to reflect this statutory provision.

E. Adding a General Safety and Soundness Requirement

The OTS also proposes to add a general requirement that savings associations must maintain a safe and sound level of liquidity at all times. This is not a new position. The minimum level of liquidity required by the statutory liquidity provision does not necessarily constitute a safe level of liquidity. As explained above, savings associations have always been required to maintain a safe level of liquidity and the statutory liquidity provision has not been viewed as indicative of what constitutes a safe level of liquidity.

The OTS views the statutory liquidity provision as a rigid and imprecise measure of the sufficiency of an institution's liquidity. For this reason, the OTS is seeking to reduce the burden imposed by the rigid statutory formula, while making clear that the statutory liquidity requirement and its implementing regulations do not constitute a safe harbor for demonstrating a safe and sound level of liquidity. As indicated above, safety and soundness determinations must be made on a case-by-case basis in light of the particular circumstances of each institution.

IV. Request for Comment

Comments are sought on all aspects of this proposed rulemaking.

V. Paperwork Reduction Act

The OTS invites comments on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection including the use of automated collection techniques or other forms of information technology.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The recordkeeping requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to the OTS, 1700 G Street, NW., Washington, D.C. 20552.

The recordkeeping requirements contained in this notice of proposed rulemaking are found at 12 CFR 566.4. The information is needed by the OTS in order to ensure that associations comply with a statutory liquidity requirement. The likely recordkeepers are OTS-regulated savings associations.

Estimated number of recordkeepers: 1,372.

Estimated average annual burden hours per recordkeeper: 2.

Estimated total annual recordkeeping burden: 2,744.

Start-up costs to recordkeepers: None.

Records are to be maintained in accordance with basic business practices, but not less than a period of three years.

VI. Executive Order 12866

The Director of the OTS has determined that this proposal does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), the OTS certifies that this regulation will not have a significant economic impact on a substantial number of small entities. It reduces the liquidity requirement from 5 percent to 4 percent, which should increase all savings associations' abilities to manage their assets. Additionally, the proposed regulation should ease the administrative burden of calculating compliance with liquidity requirements for all savings associations, including small savings associations.

VIII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule reduces regulatory burden. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to § 202 of the Unfunded Mandates Act.

[9] 12 U.S.C. 1465(b)(1)(C)(vi), (vii).

[10] Pub. L. 101–73, 103 Stat. 183, 313–314 (1989).

List of Subjects in 12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 566, chapter V, title 12, Code of Federal Regulations, as set forth below:

PART 566—LIQUIDITY

1. The authority section for part 566 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a; 15 U.S.C. 1691, 1691a.

2. Section 566.1 is amended by revising paragraphs (d) and (g)(8), by adding paragraphs (g)(12) and (g)(13), and by removing paragraph (h) to read as follows:

§ 566.1 Definitions.

* * * * *

(d) *Net withdrawable accounts.* The term *net withdrawable accounts* means withdrawable accounts having unexpired maturities not exceeding one year, less the unpaid balance of all loans secured by such accounts, but not including tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U.S. Treasury General Accounts, or U.S. Time Deposit Open Accounts.

* * * * *

(g) * * *

(8) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in the other provisions of paragraphs (g)(1) through (g)(7), (g)(9), (g)(12), and (g)(13) of this section.

* * * * *

(12) Mortgage-related securities as described in 12 U.S.C. 1465(b)(1)(C)(vi).

(13) Mortgage loans on the security of a first lien on residential real property as described in 12 U.S.C. 1465(b)(1)(C)(vii).

3. Section 566.2 is amended by removing paragraphs (b), (c), and (e), by redesignating paragraph (a) as paragraph (b) and paragraph (d) as paragraph (c), by adding a new paragraph (a), by revising newly designated paragraph (b), and by removing the phrase "paragraph (a)" where it appears in newly designated paragraph (c) and adding in lieu thereof the phrase "paragraph (b)" to read as follows:

§ 566.2 Requirements.

(a) *Safety and soundness.* Each savings association must maintain sufficient liquidity to ensure its safe and sound operation.

(b) *Liquidity.* Except as otherwise provided in paragraph (c) of this section, each savings association shall maintain liquid assets of not less than 4 percent of the amount of its liquidity base at the end of the preceding calendar quarter.

* * * * *

Dated: May 7, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–12574 Filed 5–13–97; 8:45 am]

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